

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Thurmond Guess, Sr.,

Plaintiff,

v.

Social Security Administration; Thomas J.
Motycka, *together, individually, separate,*

Defendants.

C/A No. 3:12-cv-1092-CMC-PJG

OPINION and ORDER

Through this action, Plaintiff, proceeding without counsel (*“pro se”*), asserts three state law causes of action against the Social Security Administration and Thomas J. Motycka, M.D. (“Dr. Motycka”), a consultative examiner for the Social Security Administration. The Magistrate Judge conducted an initial review of the complaint and construed it as a premature challenge to denial of Social Security Disability benefits. Based on that construction, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending the complaint be dismissed without service and without prejudice.

Plaintiff filed a timely objection to the Report, agreeing to dismissal of his claims against the Social Security Administration but challenging dismissal of his claims against Dr. Motycka. The matter is now before the court for review of the Report in light of Plaintiff’s objection.¹

STANDARD

¹ Plaintiff attached a June 28, 2012 letter from the Social Security Administration to his objection. This letter, which indicates that he has been awarded benefits, was not in the record when the Report was issued.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

DISCUSSION

As noted above, Plaintiff does not challenge dismissal of his claims against the Social Security Administration. In light of Plaintiff's consent and for the reasons stated in the Report, the court finds that this matter should be dismissed as to the Social Security Administration.²

Plaintiff argues that his claims against Dr. Motycka are distinct from his claims against the Social Security Administration and should be allowed to proceed. He also indicates that he is willing to amend his complaint if necessary to cure any deficiencies as to these claims.

The Report does not address Plaintiff's claims against Dr. Motycka to the extent they may be distinct from any claim for disability benefits. On its face, the complaint asserts three distinct state law causes of action against Dr. Motycka, at least some of which allegedly caused injury distinct from the (initial) denial of disability benefits. The complaint further suggests that Dr. Motycka's actions were taken as an agent of the Social Security Administration, and references federal laws prohibiting racial discrimination, though no express federal claim is asserted.

The court finds the allegations against Dr. Motycka sufficiently distinct from any claim for

² Plaintiff's claims against the Social Security Administration would, in any event, be moot to the extent he challenges the denial of benefits given that he has now received a fully favorable decision.

denial of benefits that they require separate analysis. The court, therefore, recommitts the matter to the Magistrate Judge for further proceedings, including but not limited to a preliminary screening to determine whether this court has subject matter jurisdiction over the claims and whether they satisfy the standards applicable to filings under 28 U.S.C. § 1915.

CONCLUSION

For the reasons set forth above, the claims against the Social Security Administration are dismissed without prejudice and this matter is recommitted to the Magistrate Judge for further proceedings as to the claims against Defendant Thomas J. Motycka, M.D. The court expresses no opinion as to whether those claims are viable or, if viable, whether they may proceed in this court.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
July 25, 2012